

The Honorable Kymberly K. Evanson

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STEVEN FLOYD, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

AMAZON.COM, INC., a Delaware
corporation, and APPLE INC., a California
corporation,

Defendants.

Case No. 2:22-cv-01599-KKE

JOINT STATUS REPORT

1 Given the reassignment of this matter, counsel for Plaintiff Steven Floyd and Defendants
2 Amazon.com, Inc. and Apple Inc. (collectively, the “Parties”) submit this Joint Status Report to
3 apprise the Court of proceedings to date and to alert the Court to certain outstanding disputes that
4 are fully briefed for the Court’s resolution. The Parties welcome the opportunity to appear at a
5 status conference if helpful to the Court to resolve these disputes.

6 **1. BACKGROUND**

7 Plaintiff filed a class action complaint on November 9, 2022, asserting a violation of the
8 Sherman Act. ECF No. 1. Plaintiff amended the complaint on February 27, 2023, and
9 Defendants filed motions to dismiss on March 27, 2023. ECF Nos. 37, 42-43. By Order dated
10 June 8, 2023, Judge Coughenour denied in part and granted in part Defendants’ motions to
11 dismiss. ECF No. 61. The Court held that Plaintiff had not pleaded a “per se” violation of the
12 Sherman Act but had pleaded a claim under the “rule of reason” framework. *Id.* at 10. By
13 agreement of the Parties, Defendants answered the amended complaint on July 24, 2023. ECF
14 Nos. 64-65.

15 Discovery commenced with document requests propounded by Plaintiff on July 6, 2023.
16 Defendants responded to those requests on August 7, 2023, and the Parties are negotiating
17 parameters for Defendants’ productions. These efforts are ongoing. Defendants served initial
18 document requests on September 5, 2023, and Plaintiff’s responses are forthcoming.

19 **2. PENDING DISPUTES**

20 To assist the Court’s case management, the Parties summarize below certain outstanding
21 disputes relating to (1) the case schedule and (2) the protective order and ESI protocols.

22 **a. Case Schedule**

23 On March 15, 2023, the Parties submitted competing proposed case schedules as part of
24 their Rule 26(f) Joint Status Report. ECF No. 41. Judge Coughenour did not rule on the parties’
25 scheduling disputes, or otherwise enter a case schedule.

26 The Parties have met and conferred regarding the schedule, and have adjusted certain
27 deadlines in the schedules they initially proposed given intervening events since March. The
28 Parties’ updated proposals are set forth below and appended as proposed orders. *See Exhibit A*

(Plaintiff's Proposed Schedule); Exhibit B (Defendants' Proposed Schedule).

The Parties' remaining disputes related to the schedule, both as to certain proposed dates and the structure overall, were addressed in the Rule 26(f) Joint Status Report. *See* ECF No. 41 at 8-9. In summary, the Parties' principal areas of dispute concern (1) when fact discovery should close, (2) whether merits expert discovery and summary judgment deadlines should await a ruling on class certification, and (3) whether the schedule should authorize defendants to submit a merits expert sur-reply. The Parties respectfully refer the Court to that Report for their respective positions.¹

EVENT	PLAINTIFF'S PROPOSED DEADLINE	DEFENDANTS' PROPOSED DEADLINE
Rule 26(f) Conference	February 28, 2023 (completed)	February 28, 2023 (completed)
Exchange of Initial Disclosures	March 8, 2023 (completed)	March 8, 2023 (completed)
Initial Case Management Conference	To be set by the Court	To be set by the Court
Substantial Completion of Document and Data Productions	April 3, 2024 (Rolling productions to be made throughout the discovery period as soon documents are ready to be produced)	April 3, 2024 (Rolling productions to be made throughout the discovery period as soon documents are ready to be produced)
Fact Discovery Cut Off	60 days from ruling on Class Certification	July 8, 2024 (395 days after start of discovery)
Class Certification Motion and Supporting Expert Reports	July 2, 2024 (Within 90 days of substantial completion of documents and data)	August 7, 2024 (30 days after close of fact discovery)

¹ Apple previously objected to the entry of a scheduling order absent an operative complaint. Given Judge Coughenour's motion to dismiss ruling, Apple joins Amazon's proposed schedule.

EVENT	PLAINTIFF'S PROPOSED DEADLINE	DEFENDANTS' PROPOSED DEADLINE
Class Certification Opposition and Supporting Expert Reports	September 3, 2024 (60 days from class certification motion)	November 5, 2024 (90 days from class certification motion)
Class Certification Reply and Expert Rebuttal Reports	November 4, 2024 (60 days of class certification opposition)	December 20, 2024 (45 days from class certification opposition)
Hearing on Class Certification	To be set by the Court	To be set by the Court
Plaintiff's Merits Experts Disclosure (including reports)	90 days from ruling on Class Certification	March 20, 2025 (90 days after class certification replies)
Defendants' Merits Expert Responses	45 days after Merits Expert Reports	June 3, 2025 (75 days after Plaintiff's Merits Expert Reports)
Plaintiff's Merits Expert Reply Reports	45 days after Response Reports	July 8, 2025 (35 days after response reports)
Defendants' Merits Expert Sur-Reply	N/A	August 7, 2025 (30 days after Plaintiff's Reply)
Expert Discovery Cut-Off	14 days after Reply/Rebuttal Reports	September 5, 2025 (29 days after Reply/Rebuttal Reports)
Dispositive and <i>Daubert</i> Motions	35 days after Expert Discovery Cut-Off	November 4, 2025 (60 days after Expert Discovery Cut-Off)
Dispositive and Related <i>Daubert</i> Responses	35 days after Dispositive and <i>Daubert</i> Motions	December 19, 2025 (45 days after Dispositive and <i>Daubert</i> Motions are filed)

EVENT	PLAINTIFF'S PROPOSED DEADLINE	DEFENDANTS' PROPOSED DEADLINE
Dispositive and Related <i>Daubert</i> Replies	35 days after Dispositive and <i>Daubert</i> Responses	February 2, 2026 (45 days after Dispositive and <i>Daubert</i> Responses)
Hearing on all Dispositive and <i>Daubert</i> Motions	To be set by the Court	To be set by the Court
Trial Date	14 months from ruling on Class Certification	5 months from ruling on class certification and dispositive motions, whichever is latest

a. Protective Order and ESI Protocols

On May 3, 2023, the Parties submitted a statement of disputes regarding (1) a Protective Order and (2) Protocols Regarding Discovery of Electronically Stored Information (“ESI Protocols”). *See* ECF No. 53. These disputes remain pending and the Parties maintain the positions they articulated in this briefing. *See* ECF No. 53 at 1-10 (addressing Protective Order); *id.* at 10-14 (addressing ESI Protocols).

Entry of a Protective Order and ESI Protocols will greatly assist the Parties in proceeding with discovery.

1 DATED: September 25, 2023

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